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BEFORE THE  
**FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON, D.C. 20554

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MAR 22 2000

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of

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Comment Sought On Reserve  
Prices Or Minimum Opening Bids and  
Other Auction Procedural Issues

DA 00-559

To:

The Commission

**COMMENTS OF MOBEX COMMUNICATIONS, INC.**

Mobex Communications, Inc. ("Mobex"), hereby respectfully submits its Comments in response to the Federal Communications Commission's ("FCC" or "Commission") Public Notice released on March 10, 2000 in the above-captioned matter. <sup>1</sup> In the Public Notice, the Commission invited discussion concerning various issues associated with the upcoming auction of the 6 MHz Guard Band ("Guard Band") in the 700 MHz spectrum.

For the reasons described below, Mobex believes that the minimum opening bids which the Commission has established are cost prohibitive for most small businesses. Second, the Commission's minimum opening bids directly contradict the requirements of the 1996 Telecommunications Act; specifically, Section 309(j). Finally, should the Commission retain

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<sup>1</sup> Public Notice, Comment Sought on Reserve Prices or Minimum Opening Bid and Other Auction Procedural Issues, DA 00-559 (rel. Mar. 10, 2000) (Public

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these excessive minimums, the inevitable high cost of the Guard Band spectrum will have a long-term negative impact on the few remaining small businesses in the SMR industry, including Mobex.

**I. BACKGROUND**

1. Mobex is a provider of dispatch service utilizing primarily 220, 800 and 900 MHz SMR authorizations granted by the Commission. Mobex serves customers who are located in more than twenty states.

2. On January 7, 2000, the Commission issued a First Report and Order adopting service rules for licensing the commercial use of the 746 – 764 MHz and 776 – 794 MHz bands.<sup>2</sup> The service rules adopted by the Commission specifically addressed 30 of the 36 MHz reallocated for commercial use. On March 9, 2000, the Commission issued a Second Report and Order adopting service rules for licensing the commercial use of the 700 MHz Guard Bands.<sup>3</sup> The

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Notice).

<sup>2</sup> First Report and Order; *Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission's Rules*, FCC 00-5, (Released January 7, 2000).

<sup>3</sup> 700 MHz Second Report and Order; FCC 00-90 (Released March 10, 2000).

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service rules adopted by the Commission specifically addressed the remaining 6 MHz of spectrum which were allocated for commercial use.

3. The auction for the 6 MHz of spectrum is scheduled for June 14, 2000.<sup>4</sup> The Guard Band will consist of two paired spectrum blocks located immediately adjacent to public safety spectrum: 1) one 2 MHz block, which includes 746 – 747 MHz and 776 – 777 MHz; and 2) one 4 MHz block, which includes 762 – 764 MHz and 792 – 794 MHz. The Commission further established that licensing and operations within the Guard Band are to be auctioned on the basis of 52 Major Economic Areas (“MEA’s”).

4. Additionally, the Commission established minimum bids which must be met by any businesses wishing to participate in the auction. The list of minimum bids for the 52 MEA’s has been attached for reference. The excessive cost of these minimum bids are the subject of these Comments.

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<sup>4</sup> Public Notice, *Auction of Licenses For The 700 MHz Guard Bands Scheduled For June 14, 2000*, DA 00-559, page 1.

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**II. COMMENTS**

**A. The Commission's Minimum Opening Bids Violates 309(j) of the 1996 Telecommunications Act.**

5. The 1996 Telecommunications Act ("the Act") provides that, in developing competitive bidding procedures, the Commission must consider certain statutory obligations and requirements. Specifically, Section 309(j) of the Act provides that the Commission must establish eligibility criteria and bidding methodologies that "promot[e] economic opportunity and competition and ensur[e] that new and innovative technologies are readily accessible to the American people by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, *including small businesses.*"<sup>5</sup>

6. In addressing the motives behind Section 309(j), the Commission observed that, "Congress specifically cited the needs of small businesses in enacting Section 309(j), directing the Commission to promote economic opportunities for small businesses."<sup>6</sup> The Commission has further observed that one of Congress's intentions in enacting this particular section was to "ensur[e]

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<sup>5</sup> 47 U.S.C. 309(j) (emphasis added).

<sup>6</sup> *Implementation of Section 309(j) of the Communications Act -- Competitive Bidding*, PP Docket No. 93-253, FCC 97-57 (Released March 12, 1997) at 283.

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that competitive bidding does not inadvertently favor incumbents with "deep pockets" over new companies or start-ups."<sup>7</sup>

7. As a result, the Commission's excessive minimum bids contradict Section 309(j). By establishing such an excessive minimum bid amount, the Commission has effectively precluded countless small businesses from realistically participating in the auction proceedings.

8. Along these lines, the Commission has noted that when Congress enacted Section 309(j) they did so based upon a finding that, "small business concerns which represent higher degrees of risk in financial markets than do large businesses, are experiencing increased difficulties in obtaining credit."<sup>8</sup> The ultimate result of preventing access to auctions by small businesses could be a, "significant increase in concentration in the telecommunications industries."<sup>9</sup> Thus, the Commission through its current proposal will be ensuring the very thing which Congress sought to prevent.

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<sup>7</sup> Id.

<sup>8</sup> Id. at 283 (citing Small Business Credit and Business Opportunity Enhancement Act of 1992, Pub. L. No. 102-366, s 331(a)(3), 106 Stat. 1007).

<sup>9</sup> Implementation of Section 309(j) of the Communications Act - Competitive Bidding, PP Docket No. 93-253, FCC 95-395, Released September 14, 1995, at 132.

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9. Due to this increased difficulty in obtaining capital, as well as the specter of dominance by large corporate interests, small businesses will be unable to effectively compete in the Guard Band auction. For these reasons, the Commission should ensure that the requirements are in compliance with Section 309(j) by providing more reasonable minimum bids through which small businesses will be able to more effectively compete.

**B. The Commission's Established Bids Are Cost Prohibitive For Most Small Businesses.**

10. The Commission's suggested minimum opening bids are cost prohibitive for most small businesses. The current *minimum* value for the 6 MHz of spectrum contained in the Guard Band is a staggering \$48 Million. Furthermore, the average bid for each MEA is approximately \$469,000.00. These amounts will clearly hinder the ability of small business to effectively compete in this auction. Such an impact contradicts the Commission's policy.

11. The Commission has previously addressed the critical importance of small business to the American economy. In a Report released on May 8, 1997, the Commission went to great lengths to highlight the crucial role that small businesses play in this country's unprecedented economic growth.<sup>10</sup> In the Report, the Commission recognized that small businesses constitute the vast

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<sup>10</sup> In The Matter Of Section 257 Proceeding To Identify And Eliminate Market

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majority of all employers in the United States, and are able to more rapidly innovate than larger firms, thereby more effectively serving niche markets that may not be served by large corporations.<sup>11</sup> Furthermore, it was stated that small businesses “contribute 47% of all sales in the United States, are responsible for 50% of the private gross domestic product, employ 53% of the private workforce, and produced an estimated 75% of the 2.5 million new jobs created during 1995.”<sup>12</sup> Small businesses were also recognized for producing more than twice the number of innovations per employee as large firms. Additionally, while only 3% of the employees in large enterprises work in research and development, 19% of the employees in comparable small enterprises with intellectual property work in research and development.<sup>13</sup>

12. Through the release of this Report, the Commission sought to emphasize its desire to “eliminate regulatory and other impediments to entry for small businesses in the telecommunications market.”<sup>14</sup> It is for this reason that Mobex believes the Commission should implement its crucial goals by ensuring that small businesses be given a realistic opportunity to participate in the Guard Band auction. The average bid of \$469,000 reflects the minimum threshold for any participant to

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*Entry Barriers For Small Businesses*, 1997 WL 236317 (F.C.C.), Released May 8, 1997.

11 Id. at 5.

12 Id.

13 Id.

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merely *participate* in the auction. It is a foregone conclusion, that as bidding commences, only those corporations with “deep pockets” will be successful. Larger corporations and interests who have the financing and backing will quickly and easily force smaller business from the auction in the early rounds.

13. For this reason, the Commission should lower the minimum bids to a more accessible level. Should the Commission adopt more reasonable minimum bids, small businesses will be able to more effectively compete in this crucial auction.

**C. The Inevitable High Cost of This Spectrum Will Have a Long Term Negative Impact on Small Businesses Seeking to Provide Service on This Spectrum.**

14. Due to the Commission’s prohibition of cellular system architecture in the Guard Bands, Private Land Mobile Radio Service (“PLMRS”) will be the system of choice within the Guard Band. Although the use of cellular equipment was viewed as theoretically possible, the potential for adequate coordination was viewed as “complex, uncertain, and resource-intensive . . . for both commercial and public safety users.”<sup>15</sup> For this reason, CMRS systems will be utilizing the Guard Band spectrum in order to provide this much needed service.

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14 *Id.* at 225.

15 700 MHz Second Report and Order; FCC 00-90.



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15. However, the low cost of service which is generally attributable to CMRS customers will be unattainable should the Commission start bidding at such an inflated rate. Small businesses which provide such service, and more importantly, those relying upon such service, will be forced to pass these costs on to the American consumer. Additionally, there is the likelihood that many CMRS providers will simply forego use of this spectrum due to the economic barriers associated with its implementation.

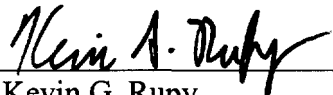
**V. CONCLUSION**

16. Therefore, Mobex requests that the Commission adjust the minimum opening bids for the pending Guard Band auction to more reasonable amounts. The minimum opening bids which the Commission has established are cost prohibitive for most small businesses within the SMR Community. Furthermore, the Commission's established bids directly contradict the requirements of the 1996 Telecommunications Act; specifically, Section 309(j). Finally, should the Commission retain these excessive minimums, the inevitable high cost of the Guard Band spectrum will prevent its effective and economical use by the SMR industry. Mobex therefore encourages the Commission to determine more reasonable values for the minimum opening bids.

**MOBEX COMMUNICATIONS, INC.**

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**FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON, D.C. 20554

By:   
Kevin G. Rupy  
Mobex Communications, Inc.  
1150 18<sup>th</sup> Street, N.W.  
Suite 250  
Washington, D.C. 20036  
(202) 861-9484

Dated: March 22, 2000.

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing COMMENTS was served this 22<sup>nd</sup> day of March, 2000 by hand delivery to:

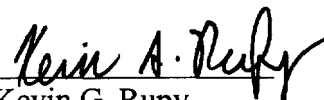
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Washington, DC 20554

and:

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1231 20<sup>th</sup> Street, N.W.  
Washington, DC 20036

By:   
Kevin G. Rupy

## IV. Attachment A

### Auction No. 33 Upfront Payments and Minimum Opening Bids

Major Economic Area	License Bandwidth (MHz)	Description	Population (1990)	Bidding Units	Upfront Payment	Minimum Opening Bid
MEA001	2	Boston	8,672,944	186,000	\$186,000	\$558,000
MEA002	2	New York City	29,027,017	623,000	\$623,000	\$1,868,000
MEA003	2	Buffalo	1,529,735	33,000	\$33,000	\$98,000
MEA004	2	Philadelphia	7,942,319	170,000	\$170,000	\$511,000
MEA005	2	Washington	7,745,433	166,000	\$166,000	\$498,000
MEA006	2	Richmond	3,897,805	84,000	\$84,000	\$251,000
MEA007	2	Charlotte-Greensboro-Greenville-Raleigh	9,825,342	211,000	\$211,000	\$632,000
MEA008	2	Atlanta	7,341,931	157,000	\$157,000	\$472,000
MEA009	2	Jacksonville	2,168,038	47,000	\$47,000	\$140,000
MEA010	2	Tampa-St. Petersburg-Orlando	5,528,763	119,000	\$119,000	\$356,000
MEA011	2	Miami	5,025,606	108,000	\$108,000	\$323,000
MEA012	2	Pittsburgh	4,148,373	89,000	\$89,000	\$267,000
MEA013	2	Cincinnati-Dayton	4,325,459	93,000	\$93,000	\$278,000
MEA014	2	Columbus	2,100,613	45,000	\$45,000	\$135,000
MEA015	2	Cleveland	5,077,339	109,000	\$109,000	\$327,000
MEA016	2	Detroit	10,041,377	215,000	\$215,000	\$646,000
MEA017	2	Milwaukee	4,634,011	99,000	\$99,000	\$298,000
MEA018	2	Chicago	12,495,510	268,000	\$268,000	\$804,000
MEA019	2	Indianapolis	2,753,182	59,000	\$59,000	\$177,000
MEA020	2	Minneapolis-St. Paul	6,018,051	129,000	\$129,000	\$387,000
MEA021	2	Des Moines-Quad Cities	2,733,385	59,000	\$59,000	\$176,000
MEA022	2	Knoxville	1,364,665	29,000	\$29,000	\$88,000
MEA023	2	Louisville-Lexington-Evansville	4,059,317	87,000	\$87,000	\$261,000
MEA024	2	Birmingham	3,082,737	66,000	\$66,000	\$198,000
MEA025	2	Nashville	2,002,283	43,000	\$43,000	\$129,000
MEA026	2	Memphis-Jackson	3,850,949	83,000	\$83,000	\$248,000
MEA027	2	New Orleans-Baton Rouge	4,310,367	92,000	\$92,000	\$277,000
MEA028	2	Little Rock	2,309,255	50,000	\$50,000	\$149,000
MEA029	2	Kansas City	2,903,432	62,000	\$62,000	\$187,000
MEA030	2	St. Louis	4,436,804	95,000	\$95,000	\$285,000
MEA031	2	Houston	5,513,511	118,000	\$118,000	\$355,000
MEA032	2	Dallas-Fort Worth	9,575,762	205,000	\$205,000	\$616,000
MEA033	2	Denver	3,952,116	85,000	\$85,000	\$254,000
MEA034	2	Omaha	1,638,440	35,000	\$35,000	\$105,000
MEA035	2	Wichita	1,094,213	23,000	\$23,000	\$70,000
MEA036	2	Tulsa	1,259,636	27,000	\$27,000	\$81,000
MEA037	2	Oklahoma City	1,695,572	36,000	\$36,000	\$109,000
MEA038	2	San Antonio	2,944,684	63,000	\$63,000	\$189,000
MEA039	2	El Paso-Albuquerque	2,114,287	45,000	\$45,000	\$136,000
MEA040	2	Phoenix	3,458,935	74,000	\$74,000	\$223,000
MEA041	2	Spokane-Billings	1,727,716	37,000	\$37,000	\$111,000
MEA042	2	Salt Lake City	2,444,454	52,000	\$52,000	\$157,000
MEA043	2	San Francisco-Oakland-San Jose	11,956,167	256,000	\$256,000	\$769,000
MEA044	2	Los Angeles-San Diego	19,333,536	415,000	\$415,000	\$1,244,000
MEA045	2	Portland	2,999,719	64,000	\$64,000	\$193,000
MEA046	2	Seattle	3,990,811	86,000	\$86,000	\$257,000
MEA047	2	Alaska	550,043	12,000	\$12,000	\$35,000
MEA048	2	Hawaii	1,108,229	24,000	\$24,000	\$71,000
MEA049	2	Guam and the Northern Mariana Islands	176,000	3,800	\$3,800	\$11,000
MEA050	2	Puerto Rico and U.S. Virgin Islands	3,623,846	78,000	\$78,000	\$233,000
MEA051	2	American Samoa	47,000	2,500	\$2,500	\$3,000
MEA052	2	Gulf of Mexico	0	2,500	\$2,500	\$2,500

## IV. Attachment A

### Auction No. 33 Upfront Payments and Minimum Opening Bids

Major Economic Area	License Bandwidth (MHz)	Description	Population (1990)	Bidding Units	Upfront Payment	Minimum Opening Bid
MEA001	4	Boston	8,672,944	372,000	\$372,000	\$1,116,000
MEA002	4	New York City	29,027,017	1,245,000	\$1,245,000	\$3,735,000
MEA003	4	Buffalo	1,529,735	66,000	\$66,000	\$197,000
MEA004	4	Philadelphia	7,942,319	341,000	\$341,000	\$1,022,000
MEA005	4	Washington	7,745,433	332,000	\$332,000	\$997,000
MEA006	4	Richmond	3,897,805	167,000	\$167,000	\$502,000
MEA007	4	Charlotte-Greensboro-Greenville-Raleigh	9,825,342	421,000	\$421,000	\$1,264,000
MEA008	4	Atlanta	7,341,931	315,000	\$315,000	\$945,000
MEA009	4	Jacksonville	2,168,038	93,000	\$93,000	\$279,000
MEA010	4	Tampa-St. Petersburg-Orlando	5,528,763	237,000	\$237,000	\$711,000
MEA011	4	Miami	5,025,606	216,000	\$216,000	\$647,000
MEA012	4	Pittsburgh	4,148,373	178,000	\$178,000	\$534,000
MEA013	4	Cincinnati-Dayton	4,325,459	186,000	\$186,000	\$557,000
MEA014	4	Columbus	2,100,613	90,000	\$90,000	\$270,000
MEA015	4	Cleveland	5,077,339	218,000	\$218,000	\$653,000
MEA016	4	Detroit	10,041,377	431,000	\$431,000	\$1,292,000
MEA017	4	Milwaukee	4,634,011	199,000	\$199,000	\$596,000
MEA018	4	Chicago	12,495,510	536,000	\$536,000	\$1,608,000
MEA019	4	Indianapolis	2,753,182	118,000	\$118,000	\$354,000
MEA020	4	Minneapolis-St. Paul	6,018,051	258,000	\$258,000	\$774,000
MEA021	4	Des Moines-Quad Cities	2,733,385	117,000	\$117,000	\$352,000
MEA022	4	Knoxville	1,364,665	59,000	\$59,000	\$176,000
MEA023	4	Louisville-Lexington-Evansville	4,059,317	174,000	\$174,000	\$522,000
MEA024	4	Birmingham	3,082,737	132,000	\$132,000	\$397,000
MEA025	4	Nashville	2,002,283	86,000	\$86,000	\$258,000
MEA026	4	Memphis-Jackson	3,850,949	165,000	\$165,000	\$496,000
MEA027	4	New Orleans-Baton Rouge	4,310,367	185,000	\$185,000	\$555,000
MEA028	4	Little Rock	2,309,255	99,000	\$99,000	\$297,000
MEA029	4	Kansas City	2,903,432	125,000	\$125,000	\$374,000
MEA030	4	St. Louis	4,436,804	190,000	\$190,000	\$571,000
MEA031	4	Houston	5,513,511	237,000	\$237,000	\$710,000
MEA032	4	Dallas-Fort Worth	9,575,762	411,000	\$411,000	\$1,232,000
MEA033	4	Denver	3,952,116	170,000	\$170,000	\$509,000
MEA034	4	Omaha	1,638,440	70,000	\$70,000	\$211,000
MEA035	4	Wichita	1,094,213	47,000	\$47,000	\$141,000
MEA036	4	Tulsa	1,259,636	54,000	\$54,000	\$162,000
MEA037	4	Oklahoma City	1,695,572	73,000	\$73,000	\$218,000
MEA038	4	San Antonio	2,944,684	126,000	\$126,000	\$379,000
MEA039	4	El Paso-Albuquerque	2,114,287	91,000	\$91,000	\$272,000
MEA040	4	Phoenix	3,458,935	148,000	\$148,000	\$445,000
MEA041	4	Spokane-Billings	1,727,716	74,000	\$74,000	\$222,000
MEA042	4	Salt Lake City	2,444,454	105,000	\$105,000	\$315,000
MEA043	4	San Francisco-Oakland-San Jose	11,956,167	513,000	\$513,000	\$1,539,000
MEA044	4	Los Angeles-San Diego	19,333,536	829,000	\$829,000	\$2,488,000
MEA045	4	Portland	2,999,719	129,000	\$129,000	\$386,000
MEA046	4	Seattle	3,990,811	171,000	\$171,000	\$514,000
MEA047	4	Alaska	550,043	24,000	\$24,000	\$71,000
MEA048	4	Hawaii	1,108,229	48,000	\$48,000	\$143,000
MEA049	4	Guam and the Northern Mariana Islands	176,000	7,500	\$7,500	\$23,000
MEA050	4	Puerto Rico and U.S. Virgin Islands	3,623,846	155,000	\$155,000	\$466,000
MEA051	4	American Samoa	47,000	2,500	\$2,500	\$6,000
MEA052	4	Gulf of Mexico	0	2,500	\$2,500	\$3,200

A-Block Subtotal	5,419,800	\$5,419,800	\$16,248,500
B-Block Subtotal	10,838,500	\$10,838,500	\$32,506,200
Total	16,258,300	\$16,258,300	\$48,754,700